

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 884

Introduced by Executive Board: Coordsen, 32, Chairperson

Read first time January 5, 2000

Committee:

A BILL

1 FOR AN ACT relating to the Nebraska Mental Health Commitment Act;
2 to amend sections 83-1003, 83-1008, 83-1013, 83-1015,
3 83-1016, 83-1019, 83-1023, 83-1024, 83-1026, 83-1047,
4 83-1048, 83-1049, 83-1050, 83-1051, 83-1055, 83-1058,
5 83-1059, 83-1061, 83-1062, 83-1064, 83-1066, and 83-1069,
6 Reissue Revised Statutes of Nebraska; to change citation
7 references; to change and eliminate references to
8 repealed sections; to harmonize provisions; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-1003, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 83-1003. County attorney shall mean the county attorney,
4 or any of such county attorney's deputies, of the county in which a
5 subject of a petition under ~~this act~~ the Nebraska Mental Health
6 Commitment Act is found at the commencement of proceedings against
7 such subject.

8 Sec. 2. Section 83-1008, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 83-1008. Indigent shall mean the inability of a subject
11 of a petition under ~~this act~~ the Nebraska Mental Health Commitment
12 Act to retain legal counsel or to pay the other expenses of
13 defending any proceeding without prejudicing his or her financial
14 ability to provide necessities of life for himself or herself or
15 his or her legal dependents.

16 Sec. 3. Section 83-1013, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 83-1013. Sheriff shall mean the sheriff, or any of his
19 or her deputies, of the county in which the subject of a petition
20 under ~~this act~~ the Nebraska Mental Health Commitment Act is found
21 at the commencement of proceedings against such subject.

22 Sec. 4. Section 83-1015, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-1015. Jail shall mean any jail in the state in which
25 facilities separate and apart shall be maintained and used for
26 persons detained under ~~this act~~ the Nebraska Mental Health
27 Commitment Act.

28 Sec. 5. Section 83-1016, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 83-1016. The clerk of the district court appointed for
3 that purpose by the district judge or judges of that judicial
4 district shall sign and issue all notices, appointments, warrants,
5 subpoenas, or other process required to be issued by the mental
6 health board, affixing ~~thereto~~ his or her seal as clerk of the
7 district court. The clerk shall file and carefully preserve in his
8 or her office all papers connected with any inquest by the board
9 members, and properly belonging to his or her office, together with
10 all notices, reports, and other communications. He or she shall
11 keep separate books in which he or she shall enter the minutes of
12 the proceedings of the board. All notices, reports, and
13 communications required may be sent by mail, unless otherwise
14 provided for in ~~this act~~ the Nebraska Mental Health Commitment Act.
15 The fact and date that they are sent and that they are received
16 shall be noted on the proper record.

17 Sec. 6. Section 83-1019, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 83-1019. Any person may apply for his or her own
20 voluntary admission to any public or private hospital, other
21 facility, or program for treatment of mental illness, alcoholism,
22 or drug abuse in accordance with the regulations of such facilities
23 or programs governing such admissions. Any person admitted for
24 voluntary inpatient or similar custodial treatment in such facility
25 shall be entitled to be unconditionally discharged from the
26 facility within forty-eight hours after delivery of his or her
27 written request made to any official of such facility, unless
28 action is taken under ~~this act~~ the Nebraska Mental Health

1 Commitment Act to continue his or her custody.

2 Sec. 7. Section 83-1023, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 83-1023. The sheriff or director of the mental health
5 center or hospital shall have each subject admitted by certificate
6 under sections 83-1020 and 83-1021 evaluated by a mental health
7 professional as soon as reasonably possible but not later than
8 thirty-six hours after his or her admission. The examining mental
9 health professional may not be a member of the mental health board
10 that will preside over the petition hearing. If, from such
11 evaluation, it is the judgment of the mental health professional
12 that the subject is either not a mentally ill dangerous person, or
13 that the harm described by section 83-1009 is not likely to occur
14 before mental health board proceedings under ~~this act~~ the Nebraska
15 Mental Health Commitment Act may be invoked to obtain custody of
16 the individual, the director of the facility shall immediately
17 notify the county attorney of his or her conclusion in this regard,
18 and, unless proceedings are pending before the mental health board
19 or are instituted before such board within twenty-four hours after
20 such notice has been received by the county attorney, the subject
21 shall immediately be discharged from further custody under the
22 certificate.

23 Sec. 8. Section 83-1024, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 83-1024. Any person believing that any individual is a
26 mentally ill dangerous person may communicate his or her belief to
27 the county attorney. Should the county attorney concur that the
28 individual is a mentally ill dangerous person and that neither

1 voluntary hospitalization nor other treatment alternatives less
2 restrictive of the subject's liberty than a mental health
3 board-ordered treatment disposition are available or would suffice
4 to prevent the harm described in section 83-1009, the county
5 attorney shall cause a petition to be drafted and acted upon as
6 provided in ~~this act~~ the Nebraska Mental Health Commitment Act.

7 Sec. 9. Section 83-1026, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 83-1026. The petition provided for in section 83-1024
10 shall be verified by the petitioner and approved by the county
11 attorney, who shall state his or her belief whether the immediate
12 custody of the subject of the petition is required to prevent the
13 occurrence of the harm described by section 83-1009 before a
14 summons could be served and the subject required to appear at a
15 hearing under sections 83-1027, 83-1035, and 83-1036. If the
16 subject is in emergency protective custody under a certificate
17 filed pursuant to sections 83-1020 to 83-1023 at the time of the
18 filing of a petition, such certificate shall be attached to the
19 petition. The petition and all subsequent pleadings and filings
20 under ~~this act~~ the Nebraska Mental Health Commitment Act shall be
21 entitled In the Interest of, Alleged to be a Mentally Ill
22 Dangerous Person, inserting the subject's name in the blank. The
23 county attorney shall have the discretion to dismiss the petition
24 at any time prior to the commencement of the hearing provided by
25 sections 83-1035 and 83-1036, and upon such motion by the county
26 attorney, the mental health board shall dismiss the petition.

27 Sec. 10. Section 83-1047, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 83-1047. In addition to the rights granted subjects of
2 petitions by any other provisions of ~~this act~~ the Nebraska Mental
3 Health Commitment Act, such subjects shall be entitled to the
4 rights provided in sections 83-1048 to 83-1064 during proceedings
5 against them under ~~this~~ the act.

6 Sec. 11. Section 83-1048, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 83-1048. The subject of a petition shall, in advance of
9 the hearing, be entitled to written notice of the time and place of
10 such hearing, the reasons alleged for believing that the person is
11 a mentally ill dangerous person requiring mental health
12 board-ordered treatment, and all rights which such subject has
13 under ~~this act~~ the Nebraska Mental Health Commitment Act. The
14 notice requirements shall be deemed satisfied by personal service
15 upon the subject of the summons or notice of time and place of the
16 hearing and copies of the petition and list of rights, required by
17 sections 83-1027, 83-1028, 83-1035, and 83-1036. If the subject of
18 the petition has counsel and if the physician or mental health
19 professional on the board determines that the nature of the alleged
20 mental disorder, if true, is such that it is not prudent to
21 disclose the label of the mental disorder to the subject, then
22 notice of this label may be disclosed to the subject's counsel
23 rather than to the subject. When the subject does not have
24 counsel, the subject has a right to the information about his or
25 her mental illness including its label. The clerk shall issue the
26 summons by order of the mental health board.

27 Sec. 12. Section 83-1049, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 83-1049. The subject of a petition shall have the right
2 to be represented by counsel in all proceedings under ~~this act~~ the
3 Nebraska Mental Health Commitment Act. Counsel for a subject who
4 is in custody shall have full access to and the right to consult
5 privately with the subject at all reasonable times. As soon as
6 possible after a subject is taken into emergency protective custody
7 under sections 83-1020 to 83-1023, or after the filing of a
8 petition under sections 83-1025 and 83-1026, whichever occurs
9 first, and before the hearing, the board shall determine whether
10 the subject of the petition is indigent. If the subject is found
11 to be indigent, the board shall ~~forthwith~~ certify that fact to the
12 district or county court by causing to be delivered to the clerk of
13 the district court or the clerk of the county court a certificate
14 for appointment of counsel as soon as possible after a subject is
15 taken into emergency custody or a petition is filed.

16 Sec. 13. Section 83-1050, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 83-1050. The appointment of counsel shall be in
19 accordance with the following procedures:

20 (1) Except in counties having a public defender, upon the
21 receipt from the board of a certificate for the appointment of
22 counsel, the clerk of the district court shall notify the district
23 judge or the county judge of the county in which the proceedings
24 are pending of the receipt of the certificate. The judge to whom
25 the certificate was issued shall ~~forthwith~~ appoint an attorney to
26 represent the person against whom an application is filed before
27 the mental health board, whereupon the clerk of the court shall
28 enter upon the certificate the name of the attorney appointed and

1 deliver the certificate of appointment of counsel to the board.
2 The clerk of the district court or the clerk of the county court,
3 as the case may be, shall also keep and maintain a record of all
4 appointments, which shall be conclusive evidence thereof. All
5 appointments of counsel provided in ~~this act~~ the Nebraska Mental
6 Health Commitment Act may be made at any time or place in the
7 state; and

8 (2) In counties having a public defender, upon ~~the~~
9 receipt from the mental health board of a certificate for the
10 appointment of counsel, the clerk of the district court shall
11 notify the public defender of his or her appointment to represent
12 the person and shall enter upon the certificate the name of the
13 attorney appointed, and deliver the certificate of appointment of
14 counsel to the board.

15 Sec. 14. Section 83-1051, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 83-1051. Counsel appointed as provided in subdivision
18 (1) of section 83-1050 shall apply to the court in which his or her
19 appointment is recorded for fees for services performed. Such
20 counsel also may apply to the court to secure separate professional
21 examination of the person whose liberty is involved and shall be
22 reimbursed for costs incurred in securing such separate examination
23 or examinations or in having other professional persons as
24 witnesses before the mental health board. The court, upon hearing
25 the application, shall fix reasonable fees, including reimbursement
26 of costs incurred. The county board of the county in which the
27 application was filed shall allow the account, bill, or claim
28 presented by the attorney for services performed under the

1 provisions of ~~this act~~ the Nebraska Mental Health Commitment Act in
2 the amount determined by the court. No such account, bill, or
3 claim shall be allowed by the county board until the amount thereof
4 shall have been determined by the court.

5 Sec. 15. Section 83-1055, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 83-1055. All mental health board hearings under ~~this act~~
8 the Nebraska Mental Health Commitment Act shall be closed to the
9 public except at the request of the subject and shall be held in a
10 courtroom or at any convenient and suitable place designated by the
11 mental health board. The board shall have the right to conduct the
12 proceeding where the subject is currently residing if the subject
13 is unable to travel.

14 Sec. 16. Section 83-1058, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 83-1058. The subject of a petition shall have the right
17 at a hearing held under ~~this act~~ the Nebraska Mental Health
18 Commitment Act to confront and cross-examine adverse witnesses and
19 evidence equivalent to the rights of confrontation granted by
20 Amendments VI and XIV of the Constitution of the United States, and
21 Article I, section 11, of the Constitution of Nebraska.

22 Sec. 17. Section 83-1059, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-1059. The rules of evidence applicable in civil
25 proceedings shall be followed at all hearings held under ~~this act~~
26 the Nebraska Mental Health Commitment Act. In no event shall
27 evidence be considered which is inadmissible in criminal
28 proceedings.

1 Sec. 18. Section 83-1061, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 83-1061. All proceedings held under ~~this act~~ the
4 Nebraska Mental Health Commitment Act shall be of record, and all
5 oral proceedings shall be reported verbatim by either a qualified
6 shorthand reporter or by tape-recording equipment equivalent in
7 quality to that required in county courts by section ~~24-545~~
8 25-2732. The written findings of the mental health board shall be
9 part of the subject's records and shall be available to the parties
10 in the case and to the hospital if it is the decision of the board
11 to commit the subject. Any qualified shorthand reporter who
12 reports proceedings presided over by a board or otherwise than in
13 his or her capacity as an official district court stenographic
14 reporter ~~under the provisions of section 24-338~~ shall apply to the
15 court for reasonable expenses and fees for services performed in
16 such hearings. The court shall fix reasonable expenses and fees,
17 and the county board shall allow payment to the reporter in the
18 full amount fixed by the court.

19 Sec. 19. Section 83-1062, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 83-1062. Any qualified mental health professional, upon
22 being authorized by the director of the mental health center or
23 government, private, or state hospital having custody of the
24 subject, may provide appropriate medical treatment for the subject
25 while in custody, ~~except + PROVIDED,~~ that the subject of a petition
26 shall not be subjected to such quantities of medication or other
27 treatment within such period of time prior to any hearing held
28 under ~~this act~~ the Nebraska Mental Health Commitment Act as will

1 substantially impair his or her ability to assist in his or her
2 defense at such hearing.

3 Sec. 20. Section 83-1064, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 83-1064. The subject of a petition may waive any of the
6 proceedings or rights incident to proceedings granted him or her by
7 section 83-1047 or any other provision of ~~this act~~ the Nebraska
8 Mental Health Commitment Act by failing to request any right
9 expressly required to be requested but, in the case of all other
10 such rights, only if the record reflects that such waiver was made
11 personally, intelligently, knowingly, understandingly, and
12 voluntarily by the subject, and such subject's legal guardian if he
13 or she is legally incompetent. When the mental health board
14 determines that the subject is not able to waive his or her rights
15 under the conditions set forth in this section, it shall be up to
16 the discretion of the subject's counsel to exercise the right.
17 When the subject is not represented by counsel the rights may not
18 be waived.

19 Sec. 21. Section 83-1066, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 83-1066. Subjects in custody or receiving treatment
22 under ~~this act~~ the Nebraska Mental Health Commitment Act shall have
23 the right:

24 (1) To be considered legally competent for all purposes
25 unless they have been declared legally incompetent. The mental
26 health board shall not have the power to declare an individual
27 incompetent;

28 (2) To receive prompt and adequate evaluation and

1 treatment for mental illness and physical ailments, and to
2 participate in their treatment planning activities to the extent
3 determined to be appropriate by the mental health professional in
4 charge of the treatment of such subjects;

5 (3) To refuse treatment, except such treatment as is
6 essential in the judgment of the medical health professional in
7 charge of such treatment to prevent the patient from causing injury
8 to himself, herself, or others or which will substantially improve
9 his or her mental illness;

10 (4) To communicate freely with all persons by sealed
11 mail, personal visitation, and private telephone conversations;

12 (5) To have reasonably private living conditions,
13 including private storage space for personal belongings;

14 (6) To engage or refuse to engage in religious worship
15 and political activity;

16 (7) To be compensated for their labor in accordance with
17 the federal Fair Labor Standards Act, 29 U.S.C. 206, as amended;

18 (8) To have access to a patient grievance procedure; and

19 (9) To file, either personally or by counsel, petitions
20 or applications for writs of habeas corpus for the purpose of
21 challenging the legality of such subject's custody or treatment.

22 Sec. 22. Section 83-1069, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-1069. Any person who willfully (1) files, or causes
25 to be filed, a certificate or petition under ~~this act~~ the Nebraska
26 Mental Health Commitment Act, knowing any of the allegations
27 thereof to be false, (2) deprives a subject of any of the rights
28 granted the subject by ~~this the~~ the act or section 83-390, or (3)

1 breaches the confidentiality of records required by section 83-1068
2 shall be guilty of a Class II misdemeanor in addition to any civil
3 liability which he or she may incur for such acts.

4 Sec. 23. Original sections 83-1003, 83-1008, 83-1013,
5 83-1015, 83-1016, 83-1019, 83-1023, 83-1024, 83-1026, 83-1047,
6 83-1048, 83-1049, 83-1050, 83-1051, 83-1055, 83-1058, 83-1059,
7 83-1061, 83-1062, 83-1064, 83-1066, and 83-1069, Reissue Revised
8 Statutes of Nebraska, are repealed.